

**SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE**

**Report to the Real Estate Fraud Prosecution Trust Fund Committee**

**Report Period:**

May 11, 2006 through October 25, 2007

**Pursuant to:**

Government Code section 27388 and San Francisco Administrative Code, Article XIII,  
Chapter X, Section 8.24-5

**Report prepared by:**

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**Report date:**

October 25, 2007

**I. PURPOSE**

Under Government Code section 27388(d), and San Francisco Administrative Code section 8.24.5(c), the District Attorney's Office must provide an annual report which details the real estate fraud cases investigated and prosecuted in the reporting period. This report covers the reporting period of May 11, 2006 through October 25, 2007.

**II. BUDGET**

A schedule of the revenue received, and expenses incurred, of the funds utilized by the District Attorney's Office from the Real Estate Fraud Prosecution Trust Fund during the reporting period is at the end of this report.

**III. SUMMARY OF REAL ESTATE FRAUD CASES HANDLED BY THE DISTRICT ATTORNEY'S OFFICE USING THE FUNDS PROVIDED BY THE REAL ESTATE FRAUD PROSECUTION TRUST FUND**

**A. CASES IN COURT**

**People v. Shaun Ryan.** Ctn. 2256936. Defendant opened a \$50,000 line of credit on realty owned by his wife separately, without her knowledge. He also forged her signature on a power of attorney form and had it notarized. Defendant then withdrew \$11,000 on the credit line before he was caught. Defendant confessed to the scheme to the police inspector. Defendant pled guilty on 2/16/07 and, after making full restitution, was sentenced on 3/16/07 to three years probation and county jail.

**People v. Kevin Bellard**, Ctn. 2274806. Defendant, an electrical contractor, after providing rewiring services to an elderly homeowner, then persuaded the victim to sell him her home at a reduced price, under a complicated contract that contemplated his fixing the house up and then reselling it for a profit. The deed to the property was not to transfer from the victim to the defendant until a third party purchaser had been found, but defendant was able to get the victim to put him on the deed immediately, before any renovation work had been done on the house, and before any other buyer had been found. Then defendant refused to do the work agreed. The case is in the midst of a preliminary hearing.

**People v. Marissa Cruz, Dennis Cruz & Mariafe Valdez**, Ctns. 2278199, 2279429, & 2281943. Defendant Marissa Cruz befriended the dependent adult victim while both were working at Goodwill Industries. The victim, in his 50's, had always lived with his parents, who had recently died when Cruz met him. The victim inherited his parents' home, free of all encumbrances. Marissa eventually began handling the victim's finances. She persuaded victim to take a loan out on his parents' home to make a down payment to purchase the house she and her family had been renting. She then moved victim into the basement of her family's house. She then got victim to sign a power of attorney in her favor. She then persuaded victim to sell his parents' home. The proceeds of that sale (\$259,000) were then deposited into a joint account in victim and Marissa's name. Within 3 weeks, all the funds were gone, having been withdrawn by Marissa, her husband Dennis, and Valdez, her sister, either in cash or in transfers to other accounts in which victim had no interest. The money has never been recovered. Marissa's family's home, which was in victim's name, was eventually foreclosed on and resold. The case is pending a preliminary hearing; a new date will be chosen for the hearing on 10/30/07.

**People v. Carmelita Barza**, Ctn. 2291706. Defendant was a longtime caregiver to the elderly victim and the victim's wife. After the wife dies, and while the victim is confined to the hospital, defendant gets victim to sign two checks giving \$150,000 to defendant. This money is then used as a down payment on a San Francisco house, which initially is purchased in the victim's name. Within weeks, title to the house is transferred from the victim to defendant, again while the victim is hospitalized. When this is discovered a month later by the victim's family, two doctors evaluate the victim and each determines he lacked mental capacity for approximately the last year. Victim dies soon after. Defendant pled guilty on 8/1/07 and was sentenced on 10/11/07. She made full restitution (including deeding back the house to the victim's estate) in this and a companion civil case, and was sentenced to five years probation, eight months county jail, 400 hours community service, and is prohibited from serving as a caregiver or handling any elder's finances.

**People v. Gregory Wiggins**, Ctn. 2312801. Defendant is acquainted with the victim, an elderly man who was conserved for financial matters in 2004, due to being victimized financially by a previous individual. Despite the conservatorship, defendant wants victim to put him on victim's real property. In 2005, defendant and the victim met with victim's conservatorship attorney, and the attorney tells defendant the victim has no legal authority to change the ownership of his property. Weeks later, defendant takes victim to

a title company and has victim add him to the title to the real property. Defendant then denies he has done so to the victim's conservator, and hires an attorney to assert the same, until the deed change is discovered. Case is set for preliminary hearing on December 3, 2007.

**People v. Juan Martinez**, Ctn. 2320320. Defendant was able to purchase a home in his name and the name of the elderly victim, whom he had briefly met. He was able to obtain information about the victim from the victim's grandson. At the time of the home purchase the victim was out of the country and had no knowledge of the transaction. Victim's signature was forged on numerous documents. Defendant's case is in the middle of a preliminary hearing, set to resume on 11/29/07.

**People v. Eleanor Green-Wesly**, Ctn. 2320637. Defendant was the trustee of a trust for fellow family members; part of the trust property was a San Francisco building. Defendant was to distribute the home to certain beneficiaries under the trust's provisions, but failed to do so. She also took out a loan against the property, the large majority of which was not used to improve the property, or to benefit the beneficiaries. A civil lawsuit ensued, defendant resigned as trustee, and a criminal investigation commenced. Defendant's case is now pending the setting of the preliminary hearing, and the next court date is 11/6/07.

## **B. CASES UNDER INVESTIGATION**

**Police reports #060425937 and 060177075** Victims loan suspect over \$100,000 for purported business deals pertaining to real estate foreclosures

**Police report #060557740** Suspect is alleged to have taken over control of elderly victim's assets, including real property. Two properties were transferred by changing deeds of trust on rental properties.

**Police report #060681747** Suspects are the niece and nephew-in-law of the elderly victim. Suspects get the victim to unknowingly sign over 1/2 interest in her realty to them.

**Police report #060816427** Elderly victim tricked by suspect son into signing deed of trust on real property to son. Victim believed she was adding her son to deed in place of her late husband, but instead instrument gave son complete title to property.

**Police report #060904301** Suspect was a financial advisor to 99 year old victim. Suspect allegedly liquidates a number of investments of the victim in order to purchase real estate for himself.

**Police reports #061188029, 061173688 and 061173729** Several victims pay suspect down payments to purchase parcels of alleged land in San Francisco, which actually turn out to be in the San Francisco Bay. Down payments range from \$5,000 to \$10,000. Most victims were not English speaking, nor able to read English language documents, like the real estate documents in this case.

**Police report #070010277** Elderly victim allegedly taken advantage of by tenant in apartment building she owns. Supposedly victim unwittingly sold the building to the tenant.

**Police reports #070755019 and 070828779** Suspect gets elderly victim to unwittingly deed her property to another person, who then resells the property to a third party.

**Police report #071008150** Elderly victim claims the suspect, her son, took out an \$80,000 loan on her home without her knowledge or permission.

#### **IV. TRAINING AND OUTREACH**

##### **A. TRAINING**

Legal Assistance for Seniors annual conference – May 2006 – attended this conference on elder abuse investigation, prosecution and prevention

Elder Abuse training presentation to City College of San Francisco paralegal students – June 2006

Training on the District Attorney’s Office role in elder abuse prosecution – July 2006 – given to the Asian Pacific Islander Legal Outreach organization in San Francisco

Elder Abuse training presentation to City College of San Francisco paramedic students – August 2006

CDAA Elder Abuse Symposium – September 2006 – attended this seminar in San Francisco, and participated in two panel discussions, one on Multi-Disciplinary Teams, and the other on Elder Death Review Teams

California State Bar 2006 Annual Meeting – October 2006 – presented at this convention in Monterey, CA, on “Elder Abuse: The Prosecutor’s Perspective”

Elder Financial Protection Network’s 2007 Call to Action conference – February 2007 – San Francisco – attended this seminar, at which District Attorney Kamala Harris was the keynote speaker

CDAA Training on implementation of the CASE (Communities Against Senior Exploitation) system in district attorney’s offices – March 2007 – Sacramento, CA

Elder Fraud and Abuse presentation to attorneys at the USF Law School Inn of Court – April 2007 –

Legal Assistance for Seniors annual conference – May 2007 – attended this conference and gave presentation on Elder Abuse and Prosecution in Oakland, CA

California Attorney General's Biannual Training Conference "Elder Abuse from Detection to Prosecution" – May 2007 - attended this seminar in Burlingame, CA

Elder Abuse presentation to San Francisco Adult Protective Services social workers – June 2007

Elder Fraud and Abuse presentation to fourteen San Francisco City agencies at Mission District Concordia senior center – August 2007

CDAA Elder Abuse Symposium – September 2007 – attended this seminar in Newport Beach, CA

Elder Fraud and Abuse presentation to San Francisco District Attorney's Office prosecutors – October 2007

Elder Fraud and Abuse presentation to the Bar Association of San Francisco – October 2007

Elder Abuse presentation to Orange County coroner investigators, Orange County, CA – October 2007

American Society on Aging's 2007 Autumn Series on Aging – October 2007 – co-presented a program in San Francisco entitled "Investigating Elder Fraud and Financial Abuse: Collaboration Between Adult Protective Services and Law Enforcement"

## **B. OUTREACH**

Senior Action Network outreach meeting at St. Mary's Cathedral, San Francisco – October 2006

Nine monthly presentations to elders at Portsmouth Square, Chinatown, San Francisco, regarding prevention of elder abuse, including real estate fraud. DA Kamala Harris was the keynote speaker at the initial event. We had newspaper and/or TV coverage for five of these events - February through October, 2007

Presentation to elders at Chinese Health Coalition regarding prevention of elder abuse - February 2007

Presentation at San Francisco Downtown Senior Center regarding information/prevention of elder abuse – March 2007 - we had newspaper coverage

Presentation at Golden Gate Park Senior Center regarding information/prevention of elder abuse, including real estate fraud – April 2007 - we had TV coverage

Participation in Elder Abuse Rally on steps of San Francisco City Hall – May 2007

Co-presented with the California Department of Corporation's Seniors Against Investment Fraud (SAIF) community outreach meeting at St Mary's Cathedral - May 2007

KALW (FM 91.7 San Francisco) – spoke on radio call-in show “Your Legal Rights” promoting Elder Abuse Awareness Month – May 2007

Presentation to elders with SFPD Fraud Detail at Valencia Gardens Senior Center regarding prevention of elder abuse, including real estate fraud – May 2007

Co-presented with the California Department of Corporation's Seniors Against Investment Fraud (SAIF) community outreach meeting at Jackie Chan Senior Center – June 2007

Presentation at San Francisco State University paralegal (elder law) class regarding information/prevention of elder abuse, including real estate fraud – July 2007

Institute on Aging farewell event with members of fifty senior services agencies - August 2007

Co-presented with the California Department of Corporation's Seniors Against Investment Fraud (SAIF) community outreach meeting at South Sunset Senior Center – September 2007

Presentation at Capp Senior Center regarding prevention of elder abuse, including real estate fraud – September 2007

At every event, we distributed brochures and pamphlets containing information about the prevention of elder physical and financial abuse, including real estate fraud.

### **MEETINGS WHICH ARE REGULARLY ATTENDED**

San Francisco Elder Death Review Team – The District Attorney's Office co-chairs this bimonthly meeting attended by representatives of the Medical Examiner's Office, SFPD, Adult Protective Services, Institute on Aging, Hospital Council, Fire and Paramedics Division, Public Health, City Attorney and the Ombudsman. We meet to discuss the circumstances of the death of a particular elder each meeting, to see if there were breakdowns in the services or procedures employed in responding to the elder prior to or at the time of their death, and roundtable suggestions for changes to avoid such problems in the future.

San Francisco Financial Abuse Specialist Team (FAST) - We attend this biweekly meeting of representatives of the District Attorney's Office, City Attorney, Public Guardian, Adult Protective Services, and SFPD. We discuss cases usually brought by APS caseworkers of elder situations involving financial abuse and/or real estate fraud

in need of urgent attention. Several of our charged cases or pending investigations originated from this forum.

Fair Lending Consortium Meeting – We attend this monthly meeting which involves representatives of the District Attorney’s Office, City Attorney, Institute on Aging, Adult Protective Services, West America Bank, Wells Fargo Bank, Spectrum Federal Credit Union, SF Credit Union Association, other financial institutions, and Legal Assistance for the Elderly. The purpose of the meeting is to develop plans to make the public aware of the problem of predatory loans, and to establish a program, in conjunction with financial institutions, law students and lawyers working pro bono, to assist homeowners who are facing foreclosure or financial difficulties due to having a predatory loan.

Multi-Disciplinary Team meeting – We attend this monthly meeting to discuss cases of elder financial or physical abuse with various professionals, including physicians, psychologists, attorneys, social workers.

Elder Forensic Center – this is a new task force comprised of professionals from the medical, psychological, social work and criminal law fields, which will meet weekly to assess cases of elder financial or physical abuse. We have been meeting regularly since the summer of 2007 in planning this center, which is expected to begin meeting in January 2008. It will then replace the current Multi-Disciplinary Team meeting.

Institute on Aging Elder Abuse Coordinating Council – The purpose of this monthly meeting is to develop methods of outreach to the elder community regarding the prevention of elder abuse. This group organizes the annual Elder Abuse Rally on the steps of City Hall and develops brochures, flyers, advertising on City buses, videos and other material regarding elder fraud and abuse, including real estate fraud. It also watches state and federal legislation in the area of elder abuse.

San Francisco Partnership for Community-Based Care & Support for older adults and adults with disabilities. The purpose of this meeting is to identify issues and challenges for community-based services and to network between all City agencies.

## **V. LEGAL CHANGES AFFECTING THE INVESTIGATION AND PROSECUTION OF REAL ESTATE FRAUD**

### **Legislation - 2005**

AB 12 – This bill was signed into law on September 30, 2005 by the Governor. This bill would require the California Law Revision Commission to study the effect of California’s non-probate transfer provisions, and to study statutes in other states that establish beneficiary deeds as a means of conveying real property through non-probate transfers, and to recommend content of a proposed statute.

AB 459 – This bill was signed into law on September 29, 2005 by the Governor. This bill would make it the sole responsibility of the seller of real property, or his or her agent, to disclose, along with other disclosures required, information about supplemental property tax assessments.

### **Legislation – 2006**

SB 1609 – This bill was signed into law on September 5, 2006 by the Governor. This bill would prohibit a lender from requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan, and would prohibit a reverse mortgage lender or broker from offering an annuity to the borrower, or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower’s right to rescind (3 days). This bill would also require a lender to refer a prospective borrower to a housing counseling agency for counseling prior to accepting a final and complete application for a reverse mortgage or assessing any fees without receiving certification that the borrower had received this counseling. The lender is required to provide a specified list of independent loan counselors.

### **Legislation 2007**

AB 434 – This bill was signed into law on October 11, 2007 by the Governor. This bill requires a notary public to either provide a photostatic copy of a line item contained in his/her active journal to the requesting member of the public, or acknowledge that the line item does not exist, within 15 business days of receipt of the request by the notary.

AB 804 – This bill was signed into law on September 26, 2007 by the Governor. This bill provides, among other items relating to escrow agents, that any escrow agent or any director, stockholder, trustee, officer, agent, or employee of that person who violates any provision of the federal Real Estate Settlement Procedures Act violates this law. A willful violation is a crime. This bill would also require a licensee who no longer desires to be licensed submit a specified closing audit report to the commissioner within 195 days of written notice, and the license is not surrendered until the commissioner has reviewed and accepted the closing audit report.

SB 183 – This bill was signed into law on July 12, 2007 by the Governor. This bill provides that after the death of an elder or dependent adult, the right to commence or maintain an action shall pass to the personal representative, to an intestate heir whose interest may be affected by the action, to the decedent’s successor in interest, as defined, or an interested person, as defined, subject to specified conditions.

SB 223 – This bill was signed into law on October 5, 2007 by the Governor. This bill would prohibit a licensed appraiser from engaging in any appraisal activity in connection with the purchase, sale, transfer, financing, or development of real property if his or her compensation is dependent on or affected by the value conclusion generated by the appraisal. This bill would also prohibit anyone with an interest in a real estate transaction involving an appraisal from improperly influencing, as specified, the reporting, result, or

review of a real estate appraisal sought in connection with a mortgage loan. This bill is to take effect immediately as an urgency statute.

SB 611 – This bill was signed into law on July 12, 2007 by the Governor. This bill would permit the remedy of attachment against a defendant’s property, in cases involving financial abuse against an elder or dependent adult, to secure the amount of the claimed indebtedness in connection with cases involving contracts, whether or not other forms of relief are demanded.

SB 868 – This bill was signed into law on October 10, 2007 by the Governor. This bill would authorize the investigation of certain potential In-Home Supportive Services (IHSS) programs by a nonprofit consortium or public authority to include criminal background checks conducted by the Department of Justice. This bill requires the public authority or nonprofit consortium to deny a potential IHSS provider’s request to be placed on the registry for providing supportive services if the criminal background check reveals that the person has been convicted of specified offenses, including any felonies.

SJR 12 – This Joint Resolution was introduced in 2007 and is extended as a two-year bill. Senator Simitian plans to announce this Resolution during Elder Abuse Awareness month in May 2008. This measure would request the President and the Congress of the United States to enact legislation that would authorize the United States Postmaster General to establish a special rate of postage for first-class mail, and to issue a special postage stamp, to provide funds for elder abuse prevention and awareness programs.

**Court decisions 2006**

People v. Brock (2006) 143 C.A.4<sup>th</sup> 1266 – This court of appeal decision reversed the conviction of a defendant for theft from an elder and grand theft. The court held that a defendant cannot be convicted of such charges based on the alleged undue influence he exercised on the victim. Undue influence is a common legal concept used in civil and probate cases concerning contracts and wills, but the court decided such concepts are not appropriate for criminal theft and fraud cases. Proposals for a legislative change to allow the concept of undue influence in elder theft cases are expected to be submitted in the 2008 legislative session.

**BUDGET FOR THE DISTRICT ATTORNEY’S OFFICE’S RECEIPT AND UTILIZATION OF REAL ESTATE FRAUD TRUST FUND RESOURCES FOR BUDGET YEARS 2006-2007 AND 2005-2006**

**Summary of Real Estate fund for FY 2006-07**

**Beginning Fund Balance:** \$ 247,539.00

**Revenues:** \$ 110,164.00

**Prosecution Expenses:**

Salaries:	\$ 123,068.00
Fringe:	\$ 21,473.00
Contractual Services:	\$ 16,550.00
<b>Total Expenses:</b>	<b>\$ 161,091.00</b>

**Balance:** \$ 196,612.00

**2006-07 Revenue Received**

July	\$ 7,737.00
August	\$ 10,664.00
September	\$ 9,531.00
October	\$ 8,178.00
November	\$ 7,787.00
December	\$ 9,313.00
January	\$ 9,894.00
February	\$ 8,842.00
March	\$ 9,525.00
April	\$ 9,321.00
May	\$ 10,614.00
June	\$ 8,758.00
<b>Revenue Detail thru June:</b>	<b>\$ 110,164.00</b>

**Summary of Real Estate fund for FY 2005-06**

**Beginning Fund Balance:** \$ 294,526.00

**Revenues:** \$ 127,322.00 (Through 6/30/06)

**Prosecution Expenses:**

Salaries:	\$ 144,075.00
Fringe:	\$ 30,234.00

**Total Expenses:** \$ 174,309.00 (Through 6/30/06)

**Balance:** \$ 247,539.00 (Through 6/30/06)

**2005-06 Revenue Received**

July	\$ 10,695.00
August	\$ 12,771.00

September	\$ 11,817.00
October	\$ 10,509.00
November	\$ 11,611.00
December	\$ 12,973.00
January	\$ 9,438.00
February	\$ 9,429.00
March	\$ 11,934.00
April	\$ 5,951.00
May	\$ 10,362.00
June	\$ 9,832.00
<b>Revenue Detail thru June:</b>	<b><u>\$ 127,322.00</u></b>